

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Low

(Coauthors: Assembly Members Bigelow, Calderon, Cooper, Dababneh, Gatto, Jones, Jones-Sawyer, Lackey, Mathis, Mullin, Olsen, Rodriguez, and Waldron Waldron, and Wilk)

(Coauthors: Senators Anderson, Berryhill, Block, Hill, Mendoza, Morrell, Nguyen, and Vidak)

February 2, 2016

An act to amend Section 21628 of, to repeal Section 21628.1 of, and to repeal and add Section 21630 of, the Business and Professions Code, relating to secondhand goods, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as amended, Low. Secondhand goods.

Existing law provides for the regulation of secondhand dealers and coin dealers, as defined. Existing law makes it unlawful for a person to engage in the business of a secondhand dealer without a license issued by the chief of police, the sheriff, or, where appropriate, the police commission. Existing law requires a local law enforcement agency to issue a license to engage in the business of a secondhand dealer or pawnbroker to an applicant who meets designated criteria. Existing law authorizes the local licensing authority and the Department of Justice to charge an initial licensure fee and a renewal fee, as specified. Existing law requires a secondhand dealer to report, as specified, to the chief of police or sheriff all secondhand "tangible personal property," as defined, purchased, taken in trade, taken in pawn, accepted for sale on

consignment, or accepted for auctioning. Existing law requires the report to include, among other things, the identification of the intended seller or pledger of the property, verified by the person taking the information by specified methods. Existing law requires the reporting of this information to the Department of Justice through a single, statewide, and uniform electronic reporting system. Existing law requires the Department of Justice to develop descriptive categories and secondhand dealers and coin dealers to use these categories in their reports.

This bill would eliminate the requirements that the Department of Justice develop, and secondhand dealers and coin dealers use, descriptive categories in their reports of acquired tangible personal property. Instead, the bill would require the Department of Justice to accept the plain text property descriptions commonly recognized and utilized by the pawn and secondhand dealer industries. The bill would require the Department of Justice to encode the plain text property descriptions, as specified, and would prohibit the Department of Justice from using funds collected from the initial licensing fee for these purposes. This bill would prohibit the Department of Justice, chiefs of police, and sheriffs from requiring secondhand dealers to report any *additional* information other than that which ~~Section 21628 of the Business and Professions Code specifies~~. *is required by these provisions. The bill would require that the single, statewide, and uniform electronic reporting system be implemented and operated in compliance with the Administrative Procedure Act and prohibit the Department of Justice from taking any action with respect to the implementation, operation, or maintenance of the electronic reporting system by adoption of an emergency regulation.*

Existing law provides an exception to the reporting requirement for the acquisition of the same property from the same customer within 12 months of a reported transfer, except when submission of the report is specifically requested in writing by the local authorities.

This bill would expand the reporting requirement exception to all acquisitions of the same property from the same customer within 12 months of a reported transfer.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to clarify
2 that pawnbrokers and other secondhand dealers are to report their
3 acquisition of tangible personal property received in pledge, trade,
4 consignment, or auction or by purchase using plain text, in
5 descriptive language historically used in the pawn and secondhand
6 industries when reporting to the single, statewide, and uniform
7 electronic reporting system operated by the Department of Justice,
8 or if not yet implemented in their respective jurisdictions, on paper
9 forms sent to the local police chief or sheriff of the jurisdiction in
10 which the secondhand dealer is physically located.

11 (b) It is further the intent of the Legislature that by specifying
12 this manner of reporting, it will relieve all secondhand dealers and
13 pawnbrokers of the inherent costs and burdens imposed under
14 existing law that requires these businesses to report their daily
15 acquisitions of secondhand tangible personal property on paper
16 forms limited to a single transaction, or where the electronic
17 reporting system is implemented, the cost associated with
18 converting industry standard descriptions to specific law
19 enforcement categories, the ongoing costs of training to that
20 standard, and the costs of implementing software to maintain that
21 standard.

22 (c) Further, it is the intent of the Legislature that the Department
23 of Justice shall continue to accept the plain text descriptive
24 language historically used in the pawn and secondhand industries
25 and shall have the continuing obligation to convert those
26 descriptions as may be required by law enforcement databases in
27 order to protect the integrity of law enforcement databases. It *is*
28 the intent of the Legislature that only properly trained law
29 enforcement personnel of the Department of Justice or local law
30 enforcement classify and encode for law enforcement databases
31 property reported by pawnbrokers and secondhand dealers and
32 that the cost of the classification or the training of law enforcement
33 personnel not be funded by pawnbrokers or secondhand dealers.

34 SEC. 2. Section 21628 of the Business and Professions Code,
35 as amended by Section 1 of Chapter 169 of the Statutes of 2015,
36 is amended to read:

37 21628. (a) Every secondhand dealer or coin dealer described
38 in Section 21626 shall report daily, or on the first working day

1 after receipt or purchase of secondhand tangible personal property,
2 on forms or through an electronic reporting system approved by
3 the Department of Justice, all secondhand tangible personal
4 property, except for firearms, which he or she has purchased, taken
5 in trade, taken in pawn, accepted for sale on consignment, or
6 accepted for auctioning, to the electronic reporting system operated
7 by the Department of Justice, or until such time as this system is
8 operational in the jurisdiction where the secondhand dealer is
9 located, on paper forms sent to the chief of police or to the sheriff,
10 in accordance with the provisions of Sections 21630 and 21633
11 and subdivision (d). The report shall be legible, prepared in
12 English, completed where applicable, and include only the
13 following information:

14 (1) The name and current address of the intended seller or
15 pledger of the property.

16 (2) The identification of the intended seller or pledger. The
17 identification of the seller or pledger of the property shall be
18 verified by the person taking the information, who may use
19 technology, including, but not limited to, cameras or software, or
20 both, to obtain information and verify identity remotely. The
21 verification shall be valid if the person taking the information
22 reasonably relies on any one of the following documents, provided
23 that the document is currently valid or has been issued within five
24 years and contains a photograph or description, or both, of the
25 person named on it, and, where applicable, is signed by the person,
26 and bears a serial or other identifying number:

27 (A) A passport of the United States.

28 (B) A driver's license issued by any state or Canada.

29 (C) An identification card issued by any state.

30 (D) An identification card issued by the United States.

31 (E) A passport from any other country in addition to another
32 item of identification bearing an address.

33 (F) A Matricula Consular in addition to another item of
34 identification bearing an address.

35 (3) (A) A complete and reasonably accurate description of
36 serialized property, including, but not limited to, the following:
37 serial number and other identifying marks or symbols,
38 owner-applied numbers, manufacturer's ~~named~~ *name* brand, and
39 model name or number. Watches need not be disassembled when
40 special skill or special tools are required to obtain the required

1 information, unless specifically requested to do so by a peace
2 officer. A special tool does not include a penknife, caseknife, or
3 similar instrument and disassembling a watch with a penknife,
4 caseknife, or similar instrument does not constitute a special skill.
5 In all instances where the required information may be obtained
6 by removal of a watchband, then the watchband shall be removed.
7 The cost associated with opening the watch shall be borne by the
8 pawnbroker, secondhand dealer, or customer.

9 (B) In the case of the receipt or purchase of a handheld electronic
10 device by a secondhand dealer, the serial number reported pursuant
11 to subparagraph (A) may be the International Mobile Station
12 Equipment Identity (IMEI), the mobile equipment identifier
13 (MEID), or other unique identifying number assigned to that device
14 by the device manufacturer. If none of these identifying numbers
15 are available by the time period required for reporting pursuant to
16 this subdivision, the report shall be updated with the IMEI, MEID,
17 or other unique identifying number assigned to that device by the
18 device manufacturer as soon as reasonably possible but no later
19 than 10 working days after receipt or purchase of the handheld
20 electronic device.

21 (C) For the purpose of this paragraph, “handheld electronic
22 device” means any portable device that is capable of creating,
23 receiving, accessing, or storing electronic data or communications
24 and includes, but is not limited to, a cellular phone, smartphone,
25 or tablet.

26 (4) A complete and reasonably accurate description of
27 nonserialized property, including, but not limited to, the following:
28 size, color, material, manufacturer’s pattern name (when known),
29 owner-applied numbers and personalized inscriptions, and other
30 identifying marks or symbols. Watches need not be disassembled
31 when special skill or special tools are required to obtain the
32 required information, unless specifically requested to do so by a
33 peace officer. A special tool does not include a penknife, caseknife,
34 or similar instrument and disassembling a watch with a penknife,
35 caseknife, or similar instrument does not constitute a special skill.
36 In all instances where the required information may be obtained
37 by removal of a watchband, then the watchband shall be removed.
38 The cost associated with opening the watch shall be borne by the
39 pawnbroker, secondhand dealer, or customer.

1 (5) A certification by the intended seller or pledger that he or
2 she is the owner of the property or has the authority of the owner
3 to sell or pledge the property.

4 (6) A certification by the intended seller or pledger that to his
5 or her knowledge and belief the information is true and complete.

6 (7) A legible fingerprint taken from the intended seller or
7 pledger, as prescribed by the Department of Justice. This
8 requirement does not apply to a coin dealer, unless required
9 pursuant to local regulation.

10 (b) (1) When a secondhand dealer complies with all of the
11 provisions of this section, he or she shall be deemed to have
12 received from the seller or pledger adequate evidence of authority
13 to sell or pledge the property for all purposes included in this
14 article, and Division 8 (commencing with Section 21000) of the
15 Financial Code.

16 (2) In enacting this subdivision, it is the intent of the Legislature
17 that its provisions shall not adversely affect the implementation
18 of, or prosecution under, any provision of the Penal Code.

19 (c) Any person who conducts business as a secondhand dealer
20 at any gun show or event, as defined in Section 478.100 of Title
21 27 of the Code of Federal Regulations, or its successor, outside
22 the jurisdiction that issued the secondhand dealer license in
23 accordance with subdivision (d) of Section 21641, may be required
24 to submit a duplicate of the transaction report prepared pursuant
25 to this section to the local law enforcement agency where the gun
26 show or event is conducted.

27 (d) (1) The Department of Justice shall recognize and accept
28 the plain text property descriptions generally accepted in the pawn
29 and secondhand industries provided by secondhand dealers, as has
30 been the longstanding practice of chiefs of police and sheriffs when
31 they receive paper reports from secondhand dealers. The
32 Department of Justice shall have the continuing duty to encode
33 the plain text property descriptions received by pawnbrokers and
34 secondhand dealers for law enforcement databases in order for
35 those descriptions to be useful for law enforcement purposes. Funds
36 collected pursuant to Section 21642.5 shall not be used by the
37 Department of Justice for the encoding or to train personnel to
38 encode these descriptions.

39 (2) With the consultation by the Department of Justice with
40 local law enforcement agencies and representatives from the

1 secondhand dealer businesses, pursuant to Resolution Chapter 16
2 of the Statutes of 2010, and upon the availability of sufficient funds
3 in the Secondhand Dealer and Pawnbroker Fund created pursuant
4 to Section 21642.5, the department shall promptly develop a single,
5 statewide, uniform electronic reporting system to be used to
6 transmit these secondhand dealer reports.

7 (3) (A) Except as otherwise provided in this section, any report
8 required of a secondhand dealer shall be transmitted by electronic
9 means.

10 (B) Until the date that the Department of Justice implements
11 the single, statewide, uniform electronic reporting system described
12 in paragraph (2), each secondhand dealer may continue to report
13 the information required by this section under the reporting
14 categories described in paragraph (1) in paper format on forms
15 approved of or provided by the Department of Justice. Chiefs of
16 police and sheriffs continuing to receive paper forms shall also
17 continue to recognize and accept the plain text property
18 descriptions generally recognized in the pawn and secondhand
19 industries.

20 (C) On and after the date that the Department of Justice
21 implements the single, statewide, uniform electronic reporting
22 system described in paragraph (2), each secondhand dealer shall
23 electronically report using that system the information required
24 by this section under the reporting standard described in paragraph
25 (1), except that for the first 30 days following the implementation
26 date, each secondhand dealer shall also report the information in
27 paper format as described in subparagraph (B).

28 (D) Unless specifically identified in this section, the Department
29 of Justice, chiefs of police, and sheriffs shall not require a
30 secondhand dealer to include any additional information concerning
31 the seller, the pledger, or the property received by the secondhand
32 dealer in the report required by this section.

33 (E) *The single, statewide, and uniform electronic reporting*
34 *system required by this chapter shall be implemented and operated*
35 *in compliance with the Administrative Procedure Act (Chapter*
36 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
37 *Title 2 of the Government Code). In implementing and operating*
38 *the single, statewide, and uniform electronic reporting system*
39 *required by this chapter, the Department of Justice, chiefs of police,*
40 *and sheriffs shall comply with Sections 21637 and 21638.*

1 *Notwithstanding any other law, the Department of Justice shall*
2 *not take any action with respect to the implementation, operation,*
3 *or maintenance of the electronic reporting system required by this*
4 *chapter by adoption of an emergency regulation.*

5 (4) A coin dealer shall report the information required by this
6 section under the reporting standard described in paragraph (1) on
7 a form developed by the Attorney General that the coin dealer
8 shall transmit each day by facsimile transmission or by mail to the
9 chief of police or sheriff. A transaction shall consist of not more
10 than one item.

11 (5) For purposes of this subdivision, “item” shall mean any
12 single physical article. However, with respect to a commonly
13 accepted grouping of articles that are purchased as a set, including,
14 but not limited to, a pair of earrings or place settings of china,
15 silverware, or other tableware, “item” shall mean that commonly
16 accepted grouping.

17 (6) Nothing in this subdivision shall be construed as excepting
18 a secondhand dealer from the fingerprinting requirement of
19 paragraph (7) of subdivision (a).

20 (e) Nothing in this section shall be construed to exempt a person
21 licensed as a firearms dealer pursuant to Sections 26700 to 26915,
22 inclusive, of the Penal Code from the reporting requirements for
23 the delivery of firearms pursuant to Sections 26700 to 26915,
24 inclusive, of the Penal Code.

25 SEC. 3. Section 21628.1 of the Business and Professions Code
26 is repealed.

27 SEC. 4. Section 21630 of the Business and Professions Code
28 is repealed.

29 SEC. 5. Section 21630 is added to the Business and Professions
30 Code, to read:

31 21630. (a) A secondhand dealer shall electronically transmit
32 to the Department of Justice’s single, statewide, uniform electronic
33 reporting system on the date of transaction or, if not then possible
34 due to an electrical, telecommunications, or other malfunction, as
35 soon as reasonable thereafter, the report of acquisition of tangible
36 personal property as required by Section 21628.

37 (b) Notwithstanding Section 21628, submission of a tangible
38 property acquisition report is not required if the report of an
39 acquisition of the same property from the same customer has been
40 submitted within the preceding 12 months.

1 (c) If the electronic reporting system operated by the Department
2 of Justice has not been implemented in the jurisdiction where the
3 secondhand dealer is located, the report shall be submitted to the
4 chief of police of the city or his or her designee within the territorial
5 limits of the incorporated city in which the secondhand dealer is
6 located. If the transaction takes place outside the territorial limits
7 of an incorporated city in which the secondhand dealer is located,
8 the report shall be submitted to the sheriff of the county or his or
9 her designee.

10 SEC. 6. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order to make the single, statewide, uniform electronic system
15 a cost savings for secondhand dealers and pawnbrokers, the plain
16 text property descriptions historically utilized by these industries
17 must be accepted by the Department of Justice, just as these plain
18 text descriptions have historically been accepted by chiefs of police
19 and sheriffs.

20 Further, to protect the integrity of law enforcement databases,
21 it is necessary to specify that only trained law enforcement
22 personnel shall input classification codes of property reported by
23 these businesses, not the businesses themselves.